TANIA SCIVETTI v. MAJLIS PEGUAM & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD KAMAL MD SHAHID J
[ORIGINATING SUMMONS NO: WA-17D-10-04-2021]
4 FEBRUARY 2022

Abstract – *Where a statute creates a right and gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal and not to others. The court must deal with an application to injunct such tribunal from performing their adjudicative duties under the legislation with caution so as not to be perceived as prematurely interfering with the adjudicative functions of such specific tribunal.*

CIVIL PROCEDURE: *Injunction – Permanent injunction – Application for – Permanent injunction restraining Disciplinary Committee of Malaysian Bar ('DC') from proceeding with any disciplinary proceedings against advocate and solicitor – DC failed to commence inquiry within one month from date of appointment without any explanation – Whether there was inordinate delay by DC – Whether DC barred from proceeding with disciplinary proceedings – Whether injunction should be allowed – Whether application premature – Whether allowing application would interfere with adjudicative functions of DC*

LIMITATION: *Cause of action – Accrual – Disciplinary proceedings by Disciplinary Committee of Malaysian Bar ('DC') against advocate and solicitor – Whether limitation period of six years from date of right of action accrued had lapsed – Whether DC barred from proceeding with disciplinary proceedings – When cause of action accrued – Whether action time-barred – Whether limitation non-issue – Legal Profession Act 1976, s. 99(3A)*

The plaintiff was an advocate and solicitor of the High Court of Malaya and a member of the Bar Council ('first defendant'). The second and third defendants were the Disciplinary Board and Disciplinary Committee of the Malaysian Bar, respectively. A hearing took place before the Advisory Board of the Prime Minister Office ('PMO'), on 4 November 2014, regarding the plaintiff's client ('hearing'), attended by three individuals from the plaintiff's law firm, including one Encik Akbar. The first defendant later received an email from the Secretary to the Head Chairman of the Advisory Board ('Puan Ida') from the PMO, seeking clarification as to whether the three individuals had a valid practising certificate as advocate and solicitor ('email dated 19 December 2014'). The first defendant replied to Puan Ida that Encik Akbar did not have a record with the first defendant. The first defendant then informed the plaintiff that there was a possible breach of s. 37(1)(b) of the Legal Profession Act 1976 ('LPA') by the plaintiff, resulting

from the hearing. The plaintiff proffered an explanation but the first defendant found the explanation unsatisfactory. On 14 December 2015, the first defendant sent a letter to the second defendant entitled 'Complaint by Bar Council Against Tania Scivetti (of Messrs Scivetti & Associates) ('respondent')'. This was followed by a letter from the second defendant to the plaintiff, on 16 March 2016, seeking explanation about the first defendant's letter. Again, the plaintiff replied but the first defendant found the explanation unsatisfactory and requested the second defendant to proceed with the investigation. The second defendant, on 14 September 2016, suggested for summary hearing but the plaintiff, on 23 September 2016, disagreed. It was on 31 October 2016 that the second defendant informed the plaintiff that a Disciplinary Committee *ie*, the third defendant, shall be appointed. The third defendant was appointed on 27 December 2016 but the hearing of disciplinary proceedings before the third defendant was only fixed on 19 April 2021. The plaintiff filed originating summons seeking (i) declaratory reliefs; and (ii) a permanent injunction restraining the second and third defendants from proceeding with any disciplinary proceedings against the plaintiff. The plaintiff submitted that: (i) the right of action accrued when the alleged event took place on 4 November 2014 when the hearing was held. The limitation period of six years from the date of right of action accrued had lapsed and therefore, the defendants were estopped or barred from proceeding with the disciplinary proceedings; and (ii) the third defendant failed to commence its inquiry within one month from the date of its appointment on 27 December 2016 and there was not an iota of explanation given by the third defendant regarding the inordinate delay of more than four years to commence its inquiry fixed on 19 April 2021. The act of convening an inquiry by the third defendant at this juncture was illegal, void and of no effect as there had been a deliberate breach of mandatory provisions of the LPA.

Held (dismissing originating summons):

(1) The keywords in s. 99(3A) of the LPA on the six-year limitation referred to the inquiry to be carried out by the Disciplinary Board *ie*, the second defendant, not the Disciplinary Committee *ie*, the third defendant. Based on the letter from the first defendant to the second defendant on 14 December 2015 and the letter from the second defendant to the plaintiff on 16 March 2016, it was clear that the period from 14 December 2015 to 16 March 2016 was clearly within a six-year limitation period. Be the alleged legal representation by Encik Akbar on 4 November 2014 was the right of action to bring the complaint accrued, the alluded chronology of events and reading of ss. 99(3A) and 100 of the LPA showed that the second defendant was still within the six-year limitation period 'inquired into by the Disciplinary Board' by having initiated 'inquiry' with the sending of its letter dated 16 March

2016 to the plaintiff. The inquiry required under s. 99(3A) of the LPA was already embarked on by the second defendant on or before its letter dated 16 March 2016 when it requested the plaintiff to provide an explanation. Therefore, the issue on the six-year limitation period under s. 99(3A) of the LPA was a non-issue in the instant case. (paras 82-86)

(2) The hearing of disciplinary proceedings had not even started. The plaintiff prematurely filed this application to injunct the second and third defendants from performing their adjudicative duties under the legislation. The court must deal with the application in hand with caution so as to not to be perceived as prematurely interfering with the adjudicative functions of the second and third defendants. Where a statute creates a right and gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal and not to others. Furthermore, it would be wrong for the court to intervene at this stage as it would be tantamount to restraining the defendants from hearing the charge against the plaintiff and would pre-empt the defendants' right under the law to adjudicate the matter. A permanent injunction must not be granted. (paras 96 & 100-102)

Case(s) referred to:

Cheah Foong Chiew v. Lembaga Jurutera Malaysia [1999] 3 CLJ 242 CA ***(refd)***

Datuk Dr Hj Hamid Sultan Abu Backer v. Pengerusi Jawatankuasa Etika Hakim-hakim ('Chairman Of The Judges' Ethics Committee') & Anor [2021] 8 CLJ 708 HC ***(refd)***

Koh Mui Tee v. Chin Lee & Ors [2014] 1 LNS 966 CA ***(dist)***

Law Society of Singapore v. Dhanwant Singh [2020] 4 SLR 736 ***(refd)***

Manggai v. Government Of Sarawak & Anor [1970] 1 LNS 80 FC ***(refd)***

Tan Sri Dr Muhammad Shafee Abdullah v. Tommy Thomas & Ors [2021] 10 CLJ 1 FC ***(refd)***

Tetuan Choong & Co & Ors v. Lembaga Tatatertib Peguam-Peguam [2004] 1 CLJ 574 HC ***(refd)***

Yeoh Poh San & Anor v. Majlis Peguam [2015] 9 CLJ 1029 CA ***(refd)***

Legislation referred to:

Federal Constitution, arts. 5, 8

Legal Profession Act 1976, ss. 37(1)(b), 94(3)(c), (d), (i), (k), (o), 99(1), (3A), 100(1)(b), (4), (11), 103A(1), 103B(1), 103EA

Legal Profession (Disciplinary Proceedings) Rules 2017, r. 6

Legal Profession (Practice and Etiquette) Rules 1978, rr. 16, 31

For the plaintiff - Muhammad Shafee Abdullah & Effa Azuwin; M/s Scivetti & Assocs

For the 1st defendant - Ringo Low & Afifah Mahirah Awang Kechik; M/s Ringo Low & Assocs

For the 2nd & 3rd defendants - T Gunaseelan & Keshvinjeet Singh; M/s Gunaseelan & Assocs

Reported by Lina E

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JUDGMENT

Ahmad Kamal Md Shahid J:

Introduction

B **[1]** On 6 April 2021, the plaintiff filed an originating summons (encl. 1) primarily seeking for:

(i) declaratory reliefs; and

(ii) a permanent injunction restraining the second and third defendants either by themselves and/or through their servants and/or their agents C from proceeding any disciplinary proceedings against the plaintiff.

[2] The prayers in encl. 1 are as follows:

(1) That this Honourable Court decrees and issues a declaration as follows:

D (a) That the right of action under s. 99(3A) of the Legal Profession Act 1976 (LPA) accrued on 4 November 2014 being the date of the alleged event;

(b) The inquiry scheduled for hearing on 19 April 2021 before the third defendant is the first inquiry on the complaint by second defendant E by virtue of s. 103A of the LPA;

(c) That pursuant to s. 99(3A) of the LPA, the limitation period of six (6) years from 4 November 2014 has already been set in and the third defendant is estopped or barred from proceeding with any inquiry on the complaint *via* the third defendant;

F (d) That an email dated 19 December 2014 from Advisory Board to the second defendant complaining about the conduct of a hearing dated 4 November 2014 is the complaint made against the plaintiff under s. 100(1) of the LPA;

(e) That a letter dated 14 December 2015 by the first defendant is not G a complaint under s. 100(1) of the LPA and of no effect against the plaintiff;

(f) That the findings of guilt and/or misconduct in the letter dated 14 December 2015 made prematurely by the first defendant and executed by the then, President of the first defendant was a blatant act of bias, abuse of power and also abuse of process that amounts H to a transgression of the plaintiff's right to a fair hearing under art. 5 of Federal Constitution (FC);

(g) That the act of convening an inquiry by the third defendant on the appointment by the second defendant at this juncture is illegal, void and of no effect as there has been a breach of mandatory provision I of s. 103B(1) of the LPA;

(h) That there has been a violation of art. 5 of the FC by the act of the second and third defendants convening the inquiry, not in accordance with the law, which has the effect of jeopardising the plaintiff's rights to livelihood and therefore unconstitutional;

(i) That there has been a violation of art. 8 of the FC by the act of the second and third defendants convening the inquiry not in accordance with the law, as the plaintiff was deprived from the rights of equality with the rights of another class of people who are also subjected to the disciplinary proceedings under the same Act but was done in accordance with the law;

(j) That the disciplinary proceedings instituted by the second defendant against the plaintiff were therefore illegal, null and void;

(2) An interim injunction be and is hereby granted to restrain the second and third defendants from proceeding with any disciplinary proceedings against the plaintiff pending the outcome of the plaintiff's originating summons.

(3) A permanent injunction restraining the second and third defendants either by themselves and/or through their servants and/or their agents from proceeding with any disciplinary proceedings against the plaintiff due to lapse of time.

(4) Further, and/or in the alternative, that all such further disciplinary proceedings against the plaintiff stayed pending the outcome of the plaintiff's originating summons.

(5) That no order in relation to cost is made in relation to this originating summons; and

(6) For any other reliefs and/or orders deemed fit by this Honourable Court.

Background Facts

[3] The plaintiff is an advocate and solicitor of the High Court of Malaya and a member of the first defendant.

[4] The first defendant is a professional body that regulates the profession of lawyers in Peninsular Malaysia. The first defendant manages the affair and executions of the Malaysian Bar under the Legal Profession Act 1976 (LPA).

[5] The second defendant is the Disciplinary Board of Malaysian Bar.

[6] The third defendant is the Disciplinary Committee of Malaysian Bar.

[7] On 4 November 2014, there was a hearing held before the Advisory Board of Prime Minister's Office regarding the plaintiff's client named Azman bin Bahari (the hearing). Three individuals namely Syazwani binti Mohd Zawawi, Nor Rabiatul binti Bahari and Muhammad Akbar bin Abdul Gafoor (Encik Akbar) from the plaintiff's law firm Messrs Scivetti & Associates attended the hearing.

[8] On 19 December 2014, the first defendant received an email from Ida Rohana binti Othman (Puan Ida), the Secretary to the Head Chairman of Advisory Board from the Prime Minister's Office seeking clarification as to whether the above three individuals have a valid practising certificate as advocate and solicitor.

[9] The email dated 19 December 2014 with the heading "Memohon Pengesahan Sijil Amalan Guaman" is reproduced as follows:

> Tuan,
>
> PEMOHON PENGESAHAN SIJIL AMALAN GUAMAN
>
> Dengan hormatnya saya telah diarah untuk merujuk perkara di atas.
>
> 2. Dimaklumkan bahawa, peguam-peguam berikut iaitu Encik Muhammad Akbar Bin Abdul Gafoor, Puan Nor Rabiatui Binti Bahari dan Puan Syazwani Binti Mohd Zawawi daripada Tetuan Scivetti & Associates telah hadir di hadapan Lembaga Penasihat untuk mengendalikan kes di bawah Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas). 1985 dan mewakili anak guam mereka bagi kes ABG 240/2014 dalam Persidangan Lembaga Penasihat di Batu Gajah pada 04.11.2014.
>
> 3. Untuk maklumat, pada masa pendengaran bagi kes ABG 240/2014 tersebut Encik Muhammad Akbar Bin Abdul Gafoor telah mengendalikan sepenuhnya kes berkenaan. Kes telah pun selesai didengar dan keputusan telah di buat oleh Lembaga Penasihat.
>
> 4. Sehubungan itu, Lembaga Penasihat dengan ini ingin memohon pengesahan segera daripada pihak tuan sama ada ketiga-tiga peguam seperti yang dinyatakan di atas mempunyai Sijil Amalan Guaman yang layak membolehkan mereka mengendalikan mana-mana perbicaraan.
>
> 5. Segala kerjasama dan maklumat pihak tuan berhubung perkara ini amatlah dihargai.
>
> Sekian, terima kasih.
>
> "BERKHIDMAT UNTUK NEGARA"
>
> Saya yang menurut perintah,

...

(IDA ROHANA BINTI OTHMAN)

Setiausaha
b.p : Ketua Pengerusi Lembaga Penasihat
Jabatan Perdana Menteri
Tel: 03 8870 5555
Faks: 03 8888 3776

[10] On 24 December 2014, the Membership Department of the Bar Council's replied to Puan Ida as follows:

Puan,

Kami merujuk kepada e-mel puan yang bertarikh 23.12.2014.

Untuk maklumat pihak puan, kami tidak mempunyai rekod Encik Muhammad Akbar B Abdul Gafoor berdaftar dengan Majlis Peguam.

Sekian, Terima Kasih.

[11] *Vide* letter dated 21 July 2015, the first defendant informed the plaintiff that there was a possible breach of s. 37(1)(b) of the LPA by the plaintiff resulting from the hearing on 4 November 2014 where the hearing was allegedly handled by Encik Akbar solely.

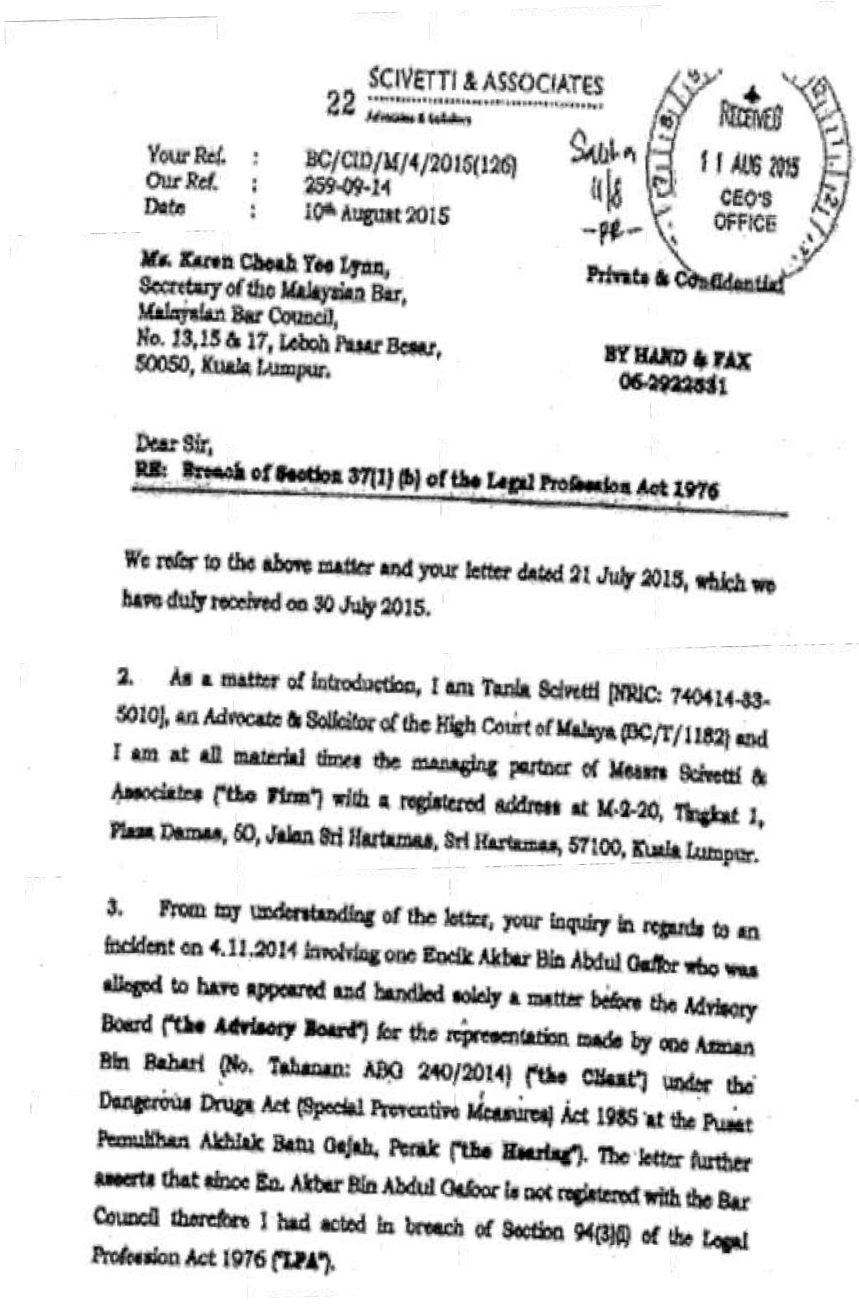
[12] The plaintiff's attention was drawn to s. 94(3)(i) of the LPA for "allowing any unauthorised person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision." The plaintiff was therefore required to explain within 14 days.

[13] Due to the late receipt of the letter dated 21 July 2015 by the plaintiff, the plaintiff requested for extension of time to reply to the allegation in the letter dated 21 July 2015.

[14] *Vide* letter dated 6 August 2015, the first defendant was agreeable to grant an extension of time for the plaintiff to provide an explanation on or before 21 August 2015.

[15] *Vide* letter dated 10 August 2015, the plaintiff explained the alleged breach of s. 37(1)(b) of the LPA. This letter from the plaintiff is of particular importance as the first defendant found the explanation given was unsatisfactory which led to the subsequent disciplinary proceedings taken against the plaintiff.

[16] The letter dated 10 August 2015 is as follows:



SCIVETTI & ASSOCIATES
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RECEIVED
11 AUG 2015
CEO'S OFFICE

Your Ref. : BC/CID/M/4/2015(126)
Our Ref. : 259-09-14
Date : 10th August 2015

Private & Confidential

Ms. Karen Cheah Yee Lynn,
Secretary of the Malaysian Bar,
Malaysian Bar Council,
No. 13,15 & 17, Leboh Pasar Besar,
50050, Kuala Lumpur.

BY HAND & FAX
06-2922551

Dear Sir,

RE: Breach of Section 37(1) (b) of the Legal Profession Act 1976

We refer to the above matter and your letter dated 21 July 2015, which we have duly received on 30 July 2015.

2. As a matter of introduction, I am Tania Scivetti [NRIC: 740414-33-5010], an Advocate & Solicitor of the High Court of Malaya (BC/T/1182) and I am at all material times the managing partner of Messrs Scivetti & Associates ("the Firm") with a registered address at M-2-20, Tingkat 1, Plaza Damas, 60, Jalan Sri Hartamas, Sri Hartamas, 57100, Kuala Lumpur.

3. From my understanding of the letter, your inquiry in regards to an incident on 4.11.2014 involving one Encik Akbar Bin Abdul Gaffor who was alleged to have appeared and handled solely a matter before the Advisory Board ("**the Advisory Board**") for the representation made by one Azman Bin Bahari (No. Tahanan: ABG 240/2014) ("**the Client**") under the Dangerous Drugs Act (Special Preventive Measures) Act 1985 at the Pusat Pemulihan Akhlak Batu Gajah, Perak ("**the Hearing**"). The letter further asserts that since En. Akbar Bin Abdul Gafoor is not registered with the Bar Council therefore I had acted in breach of Section 94(3)(i) of the Legal Profession Act 1976 ("**LPA**").

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4. Since 2011, En. Akbar Bin Abdul Gaffor has been retained as a Senior Legal Clerk with Messrs Scivetti & Associates and he has since rendered his services under the close supervision, control and instruction of the managing partner and other lawyers of the firm. His scope of work in the firm among others is to assist the lawyers in legal research and, note-taking as well as other auxiliary legal services.

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5. On 4.11.2014, I had instructed En. Akbar Bin Abdul Gafoor to follow the lawyers of the firm; Puan Noor Rabiatul Binti Bahari and Puan Syazwani Binti Zawawi who were both tasked with the conduct of the hearing before the Advisory Board at the Pusat Pemulihan Akhlak Batu Gajah, Perak. My instruction to him was to assist the lawyers in taking down the notes of the proceeding for them owing to the nature of the Advisory Board proceedings which are conducted swiftly and often concluded on the day of the hearing itself.

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6. For your information, initially, another counsel and I were supposed to conduct the matter on 4.11.2014, unfortunately, the lead counsel was engaged in another matter while I was indisposed after having delivered my daughter and was still in my period of confinement.

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7. I therefore passed the matter under the charge of the two lawyers who are to be followed by En. Akbar Bin Abdul Gafoor who is well acquainted with the facts of the case as he was with me when I interviewed the client just before I delivered my daughter. It is pertinent to note that En. Akbar Bin Abdul Gafoor is a friend to the client's family who also hails from Penang.

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8. I wish to emphasise that despite my condition at that time, I still retained supervision and control over the matter as the managing partner of the firm; they are to report directly to me.

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9. I also therefore refute the allegation that I had allowed En. Akbar Bin Abdul Gafoor or any unauthorized person for that matter, to carry on any legal business in my name without my direct and immediate control as a principal or without my proper supervision.

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10. The allegation made that En. Akbar Bin Abdul Gafoor handled the matter solely in the matter before the Advisory Board on 4.11.2014 is incorrect as he was there merely to accompany Puan Noor Rabiatul Binti Bahari and Puan Syazwani Binti Mohd Zawawi in his capacity as a Senior Legal Clerk in the conduct of the matter. The record would show that both lawyers were also present in the proceeding and conducted the matter before the Advisory Board.

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Thank you.

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Yours faithfully,
SCIVETTI & ASSOCIATES

TANIA SCIVETTI

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[17] *Vide* letter dated 14 December 2015, the first defendant wrote a letter entitled "Complaint by Bar Council against Tania Scivetti (of Messrs Scivetti & Associates) ("respondent")" to the second defendant. In the letter, it was stated that the first defendant was of the view that the plaintiff is guilty of misconduct for having breached s. 94(3)(c), 94(3)(d) of the LPA 1976 read in conjunction with rr. 16 and 31 of the Legal Profession (Practice and Etiquette) Rules 1978, s. 94(3)(i), 94(3)(k) of the LPA read in conjunction with Ruling 7.01(4) of the Rules and Rulings of the Bar Council and s. 94(3)(o) of the LPA.

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[18] As such, the first defendant requested the second defendant to "kindly enquire into the complaint pursuant to the LPA."

[19] On 16 March 2016, the second defendant requested the plaintiff to provide a written explanation within 14 days from the date of receipt of their letter regarding letter dated 14 December 2015.

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[20] The letter dated 16 March 2016 is as follows:

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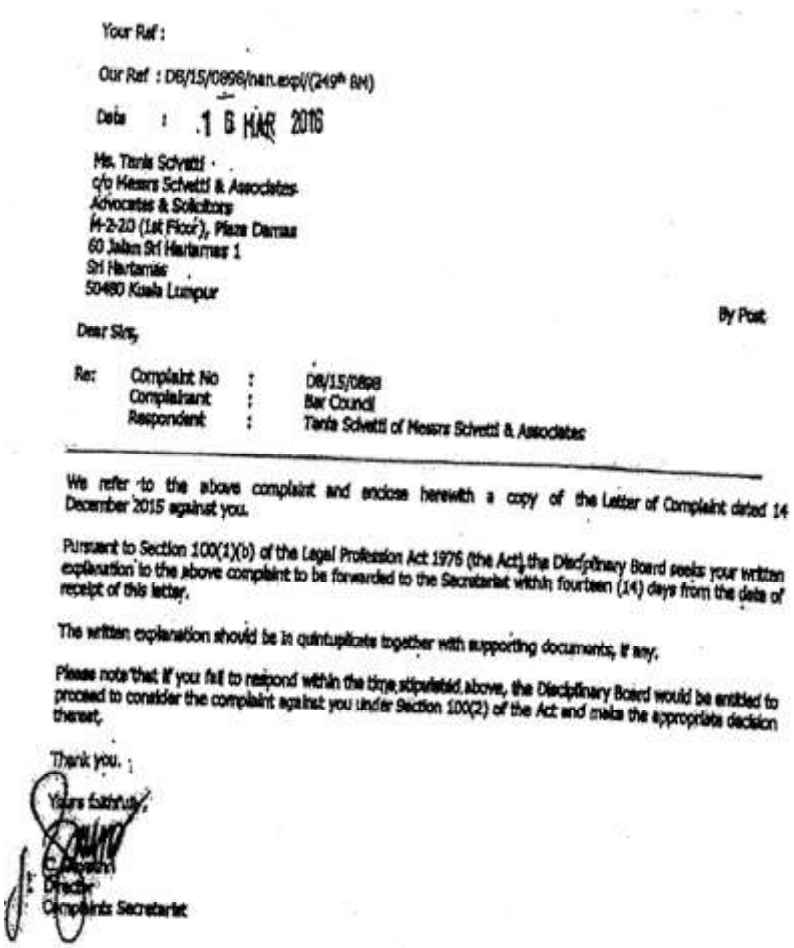

Your Ref :

Our Ref : DB/15/0898/nan.eqi/(249th BM)

Date : 16 MAR 2016

Ms. Tania Schetti
c/o Messrs Schetti & Associates
Advocates & Solicitors
H-2-2D (1st Floor), Plaza Damas
60 Jalan Sri Hartamas 1
Sri Hartamas
50480 Kuala Lumpur

By Post

Dear Sirs,

Re: Complaint No : DB/15/0898
Complainant : Bar Council
Respondent : Tania Schetti of Messrs Schetti & Associates

We refer to the above complaint and enclose herewith a copy of the Letter of Complaint dated 14 December 2015 against you.

Pursuant to Section 100(1)(b) of the Legal Profession Act 1976 (the Act), the Disciplinary Board seeks your written explanation to the above complaint to be forwarded to the Secretariat within fourteen (14) days from the date of receipt of this letter.

The written explanation should be in quintuplicate together with supporting documents, if any.

Please note that if you fail to respond within the time stipulated above, the Disciplinary Board would be entitled to proceed to consider the complaint against you under Section 100(2) of the Act and make the appropriate decision thereat.

Thank you.

Yours faithfully,

Director
Complaints Secretariat

[21] For ease of reference, the provision of s. 100(1)(b) of the LPA is reproduced below:

Inquiry into application or complaint

100. (1) Where a written application or complaint is made or referred to the Disciplinary Board, the Disciplinary Board shall, if it is satisfied that:

(a) ...

(b) there is merit in the application or complaint:

(i) post or deliver to the advocate and solicitor concerned a copy of the application or complaint together with all supporting documents, if any, furnished to the Disciplinary Board; and

(ii) request the advocate and solicitor to furnish his written explanation in quadruplicate together with supporting documents, if any, within fourteen days of the request or within such longer time as the Disciplinary Board may allow.

[22] *Vide* letter dated 28 March 2016, the plaintiff reiterated her earlier explanation contained in a letter dated 10 August 2015 and vehemently denied that there was misconduct on her part in respect of s. 94(3) of the LPA.

[23] The letter dated 28 March 2016 is reproduced as follows:

Your Ref. : DB/15/0898/nan.expl/(249th BM)
Our Ref. : 259-09-14
Date : 28th March 2016

Lembaga Tatatertib Peguam-peguam,
Advocates & Solicitors Disciplinary Board,
8th & 9th Floor, Wisma Maran,
28 Medan Pasar,
50050 Kuala Lumpur.

BY HAND & FAX
03-2031 2163

RECEIVED
29 MAR 2016

Attn: Ms. C. Gayathri

Dear Ms.,

RE: Complaint No : DB/15/0898
Complainant : Bar Council
Respondent : Tania Scivetti of Messrs Scivetti & Associates

1. We refer to the above matter and your letter dated 16 March 2016, which we have duly received on 21 March 2016 wherein inter alia you enclosed letter dated 14.12.2015 from Bar Council ("**Complaint Letter**").

2. I hereby deny all allegation of misconduct as stated in the said Complaint Letter purportedly pursuant to Section 94(3)(c), Section 94(3)(d) of the Legal Profession Act 1976 read in conjunction with Rule 16 and Rule 31 of the Legal Profession (Practice & Etiquette) Rules 1978, Section 94(3)(f), Section 94(3)(k) of the Legal Profession Act 1976 read in conjunction with Ruling 7.01(4) of the Rules and Rulings of the Bar Council and Section 94(3)(o) of the Legal Profession Act 1976.

3. My reasons are as follows:

i. I am at all material times the managing partner and principal of Messrs Scivetti & Associates ("**the Firm**") with a registered

address at M-2-20, Tingkat 1, Plaza Damas, 60, Jalan Sri Hartamas, Sri Hartamas, 57100, Kuala Lumpur.

ii. From my understanding of the said Complaint Letter, the complaint is in regards to an incident on 4.11.2014 involving one Encik Muhammad Akbar Bin Abdul Gafoor ("**MAAG**") who was alleged to have appeared and handled solely a matter before the Advisory Board ("**the Advisory Board**") for the representation made by one Azman Bin Bahari (No. Tahanan: ABG 240/2014) ("**the Client**") under the Dangerous Drugs Act (Special Preventive Measures) Act 1985 at the Pusat Pemulihan Akhlak Batu Gajah, Perak ("**the Hearing**").

iii. Since 2011, MAAG has been retained as a Senior Legal Clerk with Messrs Scivetti & Associates and he has since rendered his services as Senior Legal Clerk under close supervision, control and instruction of the managing partner and other lawyers of the Firm. His scope of work in the Firm among others is to assist the lawyers in legal research and note-taking as well as other auxiliary legal clerical services.

iv. On 4.11.2014, I had instructed MAAG to follow the lawyers of the Firm; Puan Noor Rabiatul Binti Bahari ("**NRB**") and Puan Syarwani Binti Mohd Zawawi ("**SMZ**") who were both tasked with the conduct of the hearing before the Advisory Board at the Pusat Pemulihan Akhlak Batu Gajah, Perak. My instruction to MAAG was to assist the lawyers in taking down the notes of the proceeding for them owing to the nature of the Advisory Board proceedings which are conducted swiftly and often concluded on the day of the hearing itself.

v. The complaint that MAAG handled the matter solely in the matter before the Advisory Board on 4.11.2014 is incorrect as he was there merely to assist NBR and SMZ in his capacity as a Senior Legal Clerk. Both the lawyers (NRB and SMZ) were present in the

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proceeding and conducted the matter before the Advisory Board whereas MAAG merely took notes of the proceeding.

vi. Initially, another counsel and I were supposed to conduct the matter on 4.11.2014, unfortunately, the lead counsel was engaged in another matter while I was indisposed after having delivered my daughter and was still in my period of confinement.

vii. I therefore passed the matter under the charge of the said two lawyers (NRB and SMZ) who are to be followed by MAAG who is well acquainted with the facts of the case as he was with me when I interviewed the client just before I delivered my daughter. The said client insisted and requested MAAG to be present during my interview of the client as the client claimed that MAAG is a friend to the client's family who also hails from Penang. I subsequently verified the said request by the client with MAAG and having confirmed by MAAG, I agreed to the client's request and thereafter instructed MAAG to sit in during the interview. Be that as it may, other than taking notes of the interview, MAAG did not participate in the interview.

viii. I wish to emphasise that despite my condition at that time, I still retained supervision and control over the matter as the managing partner of the Firm; they (NRB and SMZ) are to report directly to me.

4. In the circumstances, I vehemently deny that I had allowed MAAG to carry on any legal business in my name. I wish to state that the act of taking notes by MAAG before the Advisory Board on 4.11.2014 does not amount to "carry on any legal business in my name".

5. I had not and will not allow anyone to carry on any legal business in my name without my direct and immediate control as a principal or without my proper supervision. I also deny any conduct or omission to act in my professional capacity or otherwise which amounts to grave impropriety and includes:

B C D E F G H I

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(a) dishonest or fraudulent conduct in the discharge of my duties;

(b) breach of any rule of practice and etiquette of the profession made by the Bar Council under the Legal Profession Act 1976 or otherwise;

(d) breach of any provision of Legal Profession Act 1976 or of any rules made thereunder or any direction or ruling of the Bar Council;

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(e) being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute;

C

(f) permit an authorized person to carry out the duties and functions of an Advocate and Solicitor in my firm;

(g) not upholding the interest of my client, the interest of justice and dignity of the profession without regard to any unpleasant consequences either to myself or to any other person;

D

(h) not upholding the dignity and high standing of my profession.

Thank you.

Youre faithfully,

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TANIA SCIVETTI

[24] On 12 May 2016, the first defendant informed the second defendant that the explanation given was unsatisfactory and requested the second defendant to proceed with the investigation. F

[25] Subsequently *vide* a letter dated 14 September 2016, the second defendant informed the plaintiff that the second defendant at its meeting on 22 July 2016 had considered the complaint against the plaintiff. The second defendant was of the view that the complaint may be dealt with summarily under s. 100(4) of the LPA and accordingly informed the plaintiff of the same. G

[26] On 23 September 2016, the plaintiff informed the second defendant that the plaintiff is not agreeable for the matter to be summarily dealt with under s. 100(4) of the LPA. H

[27] On 31 October 2016, the second defendant acknowledged the disagreement by the plaintiff for the matter to be summarily dealt with. It was decided that a Disciplinary Committee shall be appointed under ss. 100(11) and 103A(1) of the LPA for a formal investigation. I

[28] On 7 January 2021, the second defendant informed that a new Chairperson for the Disciplinary Committee was appointed to replace the earlier Chairman.

[29] Apart from this, the defendant did not inform what had transpired between 31 October 2016 and 7 January 2021.

[30] *Vide* letter dated 21 January 2021, the third defendant requested the plaintiff to deliver a written explanation within 15 days from the receipt of the letter.

[31] The letter dated 21 January 2021 is as follows:

MS. TANIA SCIVETTI
c/o Messrs Scivetti & Associates
Advocates & Solicitors
M-2-20 (1st Floor) Plaza Damas 30
Jalan Sri Hartamas 1,
Sri Hartamas, 50480 Kuala Lumpur.

By Courier

RECEIVED
22 JAN 2021
SCIVETTI & ASSOCIATES

Dear Madam,

Re: COMPLAINT NO : DC/15/0888
COMPLAINANT : BAR COUNCIL
RESPONDENT : TANIA SCIVETTI
of Messrs Scivetti & Associates

1. The Disciplinary Board has appointed the present Disciplinary Committee to investigate and submit a report to the Board on the above complaint.

2. Pursuant to s. 103B(4)(a) of the Legal Profession Act 1976, I enclose herewith a copy of the Record of Complaint.

3. Take Notice that pursuant to s. 103B(4)(b) of the Act you are required within 15 days of the receipt of this letter to:

(a) deliver to this Disciplinary Committee, in quadruplicate, your written explanation that you may wish to offer; and
(b) indicate whether you wish to be heard by this Disciplinary Committee.

4. However, you may, if you so wish, agree to treat your letter of explanation to the Board dated 28 March 2016 as your written explanation for the purposes of s. 103B(4)(b) of the Act. If so, kindly indicate your consent in writing. You may also provide any further written explanation under paragraph 3 (a) above.

5. Kindly acknowledge receipt.

[32] *Vide* letter dated 29 January 2021, the plaintiff raised preliminary objections under s. 103EA of the LPA, *inter alia*, on the basis that there was non-compliance of ss. 99(3A) and 103B(1) of the LPA.

[33] The provision of s. 99(3A) of the LPA is as follows:

Section 99. Complaint against advocate and solicitor or pupil

(3A) No complaint concerning the conduct of any advocate and solicitor or of any pupil shall be inquired into by the Disciplinary Board after the expiration of six years from the date when the right of action to bring the complaint accrued:

Provided that where:

(a) the complaint is based upon the fraud of the advocate and solicitor or his agent or of any person through whom he or his agent claims; or

(b) the right of action to bring the complaint is concealed by the fraud of the advocate and solicitor or of his agent or any person through whom he or his agent claims, the period of limitation shall not begin to run until the complainant has discovered the fraud, or could with reasonable diligence have discovered it.

[34] The provision of s. 103B(1) of the LPA is as follows:

Section 103B. Inquiry by the Disciplinary Committee

(1) The Disciplinary Committee shall, within one month of its appointment, commence its inquiry into the written application or complaint and shall make its findings expeditiously.

[35] On 4 March 2021, the second defendant dismissed the preliminary objections and directed the third defendant to proceed with the inquiry. The second defendant informed that whilst there has been a non-compliance of the rules, it is not fatal by referring to the Court of Appeal case in *Koh Mui Tee v. Chin Lee & Ors* [2014] 1 LNS 966; [2015] 1 MLJ 388; [2014] MLRAU 301; [2014] 6 AMR 107 and the plaintiff is not barred from raising the limitation issue during the Disciplinary Committee hearing.

[36] On 15 March 2021, the third defendant notified the plaintiff that a hearing before the third defendant was fixed on 19 April 2021 at 10am.

[37] Thereafter on 6 April 2021, the plaintiff filed an originating summons at the High Court.

[38] On 13 April 2021, this court granted interim stay of the Disciplinary Committee hearing on 19 April 2021 before the third defendant pending disposal of this originating summons.

A **Issues**

[39] Having perused the cause papers, I am of the view that the issues to be determined are as follows:

(i) Whether it is proper for this court to grant a permanent injunction
B restraining the second and third defendants either by themselves and/or through their servants and/or their agents from proceeding any disciplinary proceedings against the plaintiff;

(ii) If the answer to the above is yes, whether it is proper for this court to grant the declaratory relief prayed for as follows:

C
(a) That the right of action under s. 99(3A) of the LPA accrued on 4 November 2014 being the date of the alleged event;

(b) The inquiry scheduled for hearing on 19 April 2021 before the third defendant is the first inquiry on the complaint by second defendant
D by virtue of s. 103A of the LPA.

(c) That pursuant to s. 99(3A) of the LPA, the limitation period of six years from 4 November 2014 has already set in and the third defendant is estopped or barred from proceeding with any inquiry on the complaint *via* third defendant;

E
(d) That an email dated 19 December 2014 from Advisory Board to the second defendant complaining about the conduct of a hearing dated 4 November 2014 is the complaint made against the plaintiff under s. 100(1) of the LPA;

F
(e) That a letter dated 14 December 2015 by the first defendant is not a complaint under s. 100(1) of the LPA and of no effect against the plaintiff;

(f) That the findings of guilt and/or misconduct in the letter dated 14 December 2015 made prematurely by the first defendant and
G executed by the then, President of the first defendant was a blatant act of bias, abuse of power and also abuse of process that amounts to a transgression of the plaintiff's right to a fair hearing under art. 5 of the Federal Constitution (FC);

(g) That the act of convening an inquiry by the third defendant on the
H appointment by the second defendant at this juncture is illegal, void and of no effect as there has been a breach of mandatory provision of s. 103B(1) of the LPA;

(h) That there has been a violation of art. 5 of the FC by the act of the second and third defendants convening the inquiry not in accordance
I with the law, which has the effect of jeopardising the plaintiff's rights to livelihood and therefore unconstitutional;

(i) That there has been a violation of art. 8 of the FC by the act of the second and third defendants convening the inquiry not in accordance with the law, as the plaintiff was deprived from the rights of equality with the rights of another class of people who are also subjected to the disciplinary proceedings under the same Act but was done in accordance with the law;

(j) That the disciplinary proceedings instituted by the second defendant against the plaintiff were therefore illegal, null and void.

Plaintiff's Submission

[40] The plaintiff's submissions are premised on two main grounds. The first main ground is on a six-year limitation under s. 99(3A) of the LPA and the second main ground is on a one-month time lapse under s. 103B(1) of the LPA.

[41] On the issue of limitation under s. 99(3A) of the LPA, the plaintiff submitted that the right of action accrued when the alleged event took place on 4 November 2014 when the hearing was held before the Advisory Board of Prime Minister's Office regarding the plaintiff's client named Azman bin Bahari.

[42] The plaintiff submitted that the limitation period of six years from the date of right of action accrued has already lapsed. Therefore, the defendants are estopped or barred from proceeding with the Disciplinary Committee hearing fixed on 19 April 2021, which is more than six years from 4 November 2014.

[43] Whereas on the issue of time lapse under s. 103B(1) of the LPA, the plaintiff submitted that the third defendant failed to commence its inquiry within one month from the date of its appointment on 27 December 2016.

[44] The plaintiff highlighted that there was not an iota of explanation given by the third defendant regarding the inordinate delay of more than four years by the third defendant to commence its inquiry fixed on 19 April 2021 at 10am.

[45] The plaintiff submitted that the act of convening an inquiry by the third defendant at this juncture is illegal, void and of no effect as there has been a deliberate breach of mandatory provision of the LPA.

The Defendants' Submission

[46] On the limitation period issue under s. 99(3A) of the LPA, the first defendant submitted that the provision shall be interpreted such that the complaint about the misconduct ought to be brought within six years from the date when right of action to bring the complaint accrued.

A **[47]** The first defendant submitted that one has six years from the act of misconduct to complain to the disciplinary board in consonance with r. 6 of the Legal Profession (Disciplinary Proceedings) Rules 2017.

[48] The provision of r. 6 of the Legal Profession (Disciplinary Proceedings) Rules 2017 is as follows:

B

> *No complaint relating to the alleged misconduct of any advocate and solicitor concerned or the legal firm shall be lodged by the complainant after the expiration of six years from the time when the right to bring the complaint accrued* or when the complainant first became aware of the act or the last of the acts complained of had occurred, entitling him to lodge a complaint.

C

(emphasis added)

[49] The first defendant further submitted that s. 99(3A) of the LPA placed emphasis on the act of complaint rather than the proceedings of inquiry and stipulated it only allowed for complaints of misconduct to be inquired into within six years from the right of action.

D

[50] Regarding the issue of time lapse under s. 103B(1) of the LPA which requires the third defendant to commence its inquiry within one month from the date of its appointment on 27 December 2016, no explanation was given by the defendants for the inordinate delay. However, the second and third defendants relied on *Koh Mui Tee* (*supra*) that delay under the circumstances is not fatal and the issue of limitation and time lapse can still be raised at the inquiry.

E

The Decision Of This Court

F *Issue*

Whether It Is Proper For This Court To Grant A Permanent Injunction Restraining The Second And Third Defendants Either By Themselves And/Or Through Their Servants And/Or Their Agents From Proceeding Any Disciplinary Proceedings Against The Plaintiff?

G The Genesis And Discovery Of Alleged Misconduct

[51] It is to be noted that the alleged misconduct started from an act of due diligence sought after by a Government agency on whether Encik Akbar from the plaintiff's law firm has a valid practising certificate at the material time.

H

[52] It was after hearing the explanation given by the plaintiff to the first defendant, the first defendant then on 14 December 2015 was of the view that the plaintiff is guilty of misconduct for breaching ss. 94(3)(c), (d), (i), (k) and (o) of the LPA.

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[53] The provision of ss. 94(3)(c), (d), (i), (k) and (o) of the LPA is as follows:

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PART VII

DISCIPLINARY PROCEEDINGS

B

Power of Disciplinary Board to strike off the Roll, suspend for misconduct, etc.

94. (1) ...

(2) ...

C

(3) For the purposes of this Part, "misconduct" means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes:

(a) ...

D

(b) ...

(c) **dishonest or fraudulent conduct in the discharge of his duties**;

(d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;

E

(e) ...

(f) ...

(g) ...

(h) ...

F

(i) allowing any unauthorised person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;

(j) ...

(k) the breach of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;

G

(l) ...

(m) ...

(n) ...

H

(o) being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute. (emphasis added)

I

[54] On ethical issues, the Court of Appeal in Singapore in the case of *Law Society of Singapore v. Dhanwant Singh* [2020] 4 SLR 736 stated that ethical rules are foundations surrounding as well as supporting every legal system. Justice Andrew Phang Boon Leong made the following remark on ethics as follows:

> [1] *Ethical rules are the unseen – yet vital – foundations surrounding as well as supporting every legal system. Almost imperceptibly and unnoticeably, ethical rules guide the many decisions that lawyers must make every day*. Chief Justice Earl Warren of the United States Supreme Court has famously observed that "law floats in a sea of ethics" (see speech at the Louise Marshall Award Dinner of the Jewish Theological Seminary (11 November 1962)). *In a sense, ethical rules are prescriptive – they are bright beacons designed to caution lawyers against straying into and running aground upon the sharp rocks of unacceptable practices*. Put simply, because of the importance of these rules to the legal system, they have normative content – they are guiding lights illuminating what it means to be a part of a noble and honourable profession and what is expected of a member of such a profession. This case illustrates the necessity of interpreting ethical rules in that latter, purposive and normative sense. To do anything less will lead to the pollution of the sea of ethics, with correspondingly inimical as well as toxic consequences for the legal profession as a whole.
>
> (emphasis added)

[55] From the above, it is appreciated that the alleged breaches could have serious implications not only on the profession as a whole but also on the public as well as the Judiciary.

[56] I am not prejudging that there is indeed misconduct on the part of the plaintiff by mentioning the above. I just like to highlight that ethical concern on a lawyer has an impact on every legal system which Judiciary is part of it. It is within the due process for the plaintiff to let the third defendant commence its inquiry first. I say so for the following reasons:

The Intervention Of Tribunal Proceedings

[57] The hearing of disciplinary proceedings before the third defendant was fixed on 19 April 2021 at 10am. The hearing of disciplinary proceedings has yet to take place and the plaintiff proceeded to file this application on 6 April 2021. An interim stay of Disciplinary Committee hearing pending the disposal of this originating summons was granted by this court.

[58] Therefore, the question now is whether it is proper for the plaintiff to file an application to prevent the third defendant from carrying out its adjudicative function?

[59] In *Cheah Foong Chiew v. Lembaga Jurutera Malaysia* [1999] 3 CLJ 242; [1999] 3 MLJ 110; [1999] 1 MLRA 316; [1999] 2 AMR 2421, the appellant was charged under the Registration of Engineers Rules 1972. Before the

disciplinary proceedings could commence, the appellant applied to the court to challenge the jurisdiction of the respondent to bring the charge against him. The issue was whether, on the facts, the court ought to intervene.

[60] Shaik Daud Ismail JCA (as he then was) stated that the appellant's application to the court, in the circumstances of the case, is premature. His Lordship stated that it would be wrong for the courts to intervene at this stage as it would be tantamount to restraining the respondent from hearing the charge against the appellant, and would pre-empt the respondent's right under the law to adjudicate the matter. His Lordship was also of the view that the learned judge was right when he said that it was premature for the court to injunct the respondent in exercising their powers.

[61] Shaik Daud Ismail JCA (as he then was) made the following ruling:

> We agree with the contention of the learned counsel for the respondent that although the courts have the power to intervene, in the circumstances of this case, we should not intervene on the issue of jurisdiction. The correct principle on this is as laid down in *Government Of Malaysia & Anor v. Jagdis Singh* [1987] 2 MLJ 185. In that case, the respondent had received notices of additional assessment for income tax for the years 1979 to 1984 inclusive. The respondent's accountant wrote to the Department of Inland Revenue, informing them of the respondent's desire to appeal against the additional assessments. However, the respondent filed a motion for an order of *certiorari* to quash the said notices of additional assessments on the grounds that the notices of assessments are based on conjecture and have been issued maliciously and as a vindictive act. The High Court granted the respondent's application. On appeal, however, the then Supreme Court allowed the appeal and held that:
>
> > (1) the discretion is still with the courts to act by way of judicial review but where there is an appeal provision available to the applicant, *certiorari* should not normally issue unless there is shown a clear lack of jurisdiction or a blatant failure to perform some statutory duty or, in appropriate cases, a serious breach of principles of natural justice.
>
> It is clear from this decision that as a matter of judicial policy, the normal rule is not for the court to intervene but to allow the domestic tribunal to proceed and decide the matter. It is clear that domestic tribunals can determine its own jurisdiction. It is for the applicant to raise the issue of jurisdiction before the tribunal itself which is capable of making a decision. In *Rex v. Fulham, Hammersmith and Kensington Rent Tribunal; ex p Zerek* [1951] 2 KB 1 Devlin J at p. 10 said:
>
> > In my opinion, the argument on behalf of the applicant is based on a misconception of what it is that a tribunal in cases such as this is doing. When, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to their jurisdiction, the tribunal have to make up their minds whether they will act or not, and for that purpose, to arrive at some decision on whether they have jurisdiction or not.

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> *... We are of the view that the appellant's application to the court, in the circumstances of this case, is premature. We feel that it would be wrong for the courts to intervene at this stage as it would tantamount to restraining the respondent from hearing the charge against the appellant, and would pre-empt the respondent's right under the law to adjudicate the matter. We are of the view that the learned judge was right when he said that it was premature for the court to injunct the respondent in exercising their powers. We therefore dismissed the appeal with costs and ordered the deposit to go to the account of costs*.
>
> (emphasis added)

[62] The principle in *Cheah Foong Chiew* (*supra*) is followed in the case of *Tetuan Choong & Co & Ors v. Lembaga Tatatertib Peguam-Peguam* [2004] 1 CLJ 574; [2003] 3 MLRH 703; [2004] 1 AMR 575 where the plaintiffs filed an application to restrain the Disciplinary Committee from hearing a complaint made against them by the Bar Council of Malaysia. Raus Sharif J (as he then was) with clear and succinct wordings stated that:

> I am of the view in an application of this nature, the court must consider not only the interests of the advocates and solicitors, but also that of the legal profession as a whole, and above all public interest. It is in the public interest that there be an ethical and disciplined legal profession and indeed the privileged position which the legal profession enjoys by law can only be justified on those grounds. It is for this reason, to ensure that public interest in having a legal profession of the highest possible standard is upheld, Parliament has, in his wisdom set up the scheme of disciplinary proceedings under the Act for the proper discipline of advocates and solicitors.
>
> *Thus, taking into consideration the scheme of disciplinary proceedings under the Act, I am of the view that this court must not entertain this type of action. To me, the plaintiffs must exhaust their domestic remedies before coming to this court. All of the plaintiffs' arguments as to the validity of the complaint can and should be raised before the Disciplinary Committee at the hearing of the said complaint.* There is an appeal process. The plaintiffs have the right to appeal to the High Court and have a further right to appeal to the Federal Court.
>
> (emphasis added)

[63] In *Manggai v. Government Of Sarawak & Anor* [1970] 1 LNS 80; [1970] 1 MLRA 344; [1970] 2 MLJ 41, the Federal Court affirmed the legal principle that where a statute creates a right and gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others. Gill FJ (as he then was) stated the following:

> It is well settled law that the court will not make a declaratory judgment where an adequate alternative remedy is available (see *Halsbury's Laws of England*, 3rd edition, volume 22, page 749, paragraph 1611). To quote but a few authorities in support of that proposition, Lord Herschell said in *Barraclough v. Brown* [1897] AC 615 620:

> It was argued for the appellant that, even if not entitled to recover the expenses by action in the High Court, he was, at all events, entitled to come to that court for a declaration that on the true interpretation of the statute he had a right to recover them, It might be enough to say that no such case was made by the appellant's claim. But, apart from this, I think it would be very mischievous to hold that when a party is compelled by statute to resort to an inferior court he can come first to the High Court to have his right to recover - the very matter relegated to the inferior court – determined. Such a proposition was not supported by authority, and is, I think, unsound in principle.

In *Pasmore v. The Oswaldtwistle Urban District Council* [1898] AC 387, 394 Earl of Halsbury L.C. said:

> ... The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.

In the more recent case of *Wilkinson v Barking Corporation* [1948] 1 KB 721 724 Asquith LJ. said:

> *... It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.*
>
> (emphasis added)

[64] In the recent case of *Datuk Dr Hj Hamid Sultan Abu Backer v. Pengerusi Jawatankuasa Etika Hakim-hakim ('Chairman Of The Judges' Ethics Committee') & Anor* [2021] 8 CLJ 708; [2021] MLRHU 1186, the applicant (i) questioned the jurisdiction and legality of the second respondent in taking up such exercise as the Royal Commission of Inquiry was already set up by the Cabinet to investigate the matters raised in the impugned affidavit; and (ii) raised various objections on the composition of the members of the second respondent. Mariana Yahya J (now JCA) stated that applying to prevent the committee from making its finding amounts to an abuse of the court's process and is an attempt to circumvent the decision-making process entrusted upon the respondents by the statutes:

> [71] *Decision has yet to be made and more importantly, the applicant has not been affected by any decision made by the committee. There is no finding made by the committee that has directly affected the applicant, nor he has been deprived of any benefits he has been permitted to enjoy*. In the absence of a final determination by the committee affecting the rights of the applicant, the applicant could not be said to be adversely affected by the notice to show cause dated 10 August 2020 issued by the first respondent.

A

> [72] The present application filed by the applicant prior to the respondents make the decision on the alleged breach of conduct is also amounts to an abuse of the court's process and is an attempt to circumvent the decision-making process entrusted upon the respondents by the statutes.
>
> (emphasis added)

B

[65] Besides, if the findings of the defendants after the disciplinary hearing is clearly wrong or not based on proper appreciation of the evidence or acted on wrong principles, intervention shall be warranted upon application by the aggrieved party as propounded by the Court of Appeal in *Yeoh Poh San & Anor v. Majlis Peguam* [2015] 9 CLJ 1029; [2015] MLJU 2207; [2015]
C MLRAU 477.

[66] It is therefore my considered opinion that the court must deal with the application in hand at this juncture with caution as I do not want to be perceived as prematurely interfering with the adjudicative function of second and third defendants.

D

[67] Following the decided case laws on this issue, I am of the view that the court must not entertain this type of action for a reason the plaintiff must first exhaust domestic remedies before coming to this court.

Six-year Limitation Under Section 99(3A) Of The LPA

E

[68] I take note that the plaintiff's submissions are premised on the first, six-year limitation under s. 99(3A) of the LPA and second, one-month time lapse under s. 103B(1) of the LPA.

[69] For ease of reference, I reproduce the provision of s. 99(3A) of the
F LPA as follows:

> **Section 99. Complaint against advocate and solicitor or pupil**
>
> (3A) *No complaint concerning the conduct of any advocate and solicitor or of any pupil shall be inquired into by the Disciplinary Board after the expiration of six years from the date when the right of action to bring the complaint accrued*:
>
> G
>
> Provided that where:
>
> (a) the complaint is based upon the fraud of the advocate and solicitor or his agent or of any person through whom he or his agent claims; or
>
> H
>
> (b) the right of action to bring the complaint is concealed by the fraud of the advocate and solicitor or of his agent or any person through whom he or his agent claims, the period of limitation shall not begin to run until the complainant has discovered the fraud, or could with reasonable diligence have discovered it.
>
> (emphasis added)

I

[70] The plaintiff submitted that the right of action accrued when the alleged event took place on 4 November 2014 when the hearing was held before the Advisory Board of Prime Minister's Office regarding the plaintiff's client named Azman bin Bahari.

[71] On the contrary, the first defendant submitted that one has six years from the act of misconduct to lodge a complaint to the Disciplinary Board in consonance with r. 6 of the Legal Profession (Disciplinary Proceedings) Rules 2017 which provides the following:

> *No complaint relating to the alleged misconduct of any advocate and solicitor concerned or the legal firm shall be lodged by the complainant after the expiration of six years from the time when the right to bring the complaint accrued* or when the complainant first became aware of the act or the last of the acts complained of had occurred entitling him to lodge a complaint.

Complaint – Is It An Email Dated 19 December 2014 By Puan Ida Or A Letter Dated 14 December 2015 By The First Defendant?

[72] Looking at the provision, it is about a complaint concerning the conduct of any advocate and solicitor or pupil. The plaintiff submitted that the email dated 19 December 2014 by Puan Ida is the complaint within the meaning of s. 99(1) of the LPA.

[73] The first defendant on the other hand submitted that the email by Puan Ida is not the complaint as it meant to seek clarification or confirmation from the first defendant as to whether Encik Akbar has a valid practising certificate at the material time.

[74] In a recent case of *Tan Sri Dr Muhammad Shafee Abdullah v. Tommy Thomas & Ors* [2021] 10 CLJ 1; [2021] 6 MLRA 460, Abdul Rahman Sebli FCJ discussed the term complaint as follows:

> [21] The word 'complaint' is not defined in the LPA but that is because there is no mystery to the word. It must be given its ordinary and popular meaning. The *Concise Oxford English Dictionary* (Eleventh Edition, Revised) defines it to mean: "an act or the action of complaining. A reason for dissatisfaction." There is of course a technical and legal meaning given to the word by *Black's Law Dictionary* (Deluxe Ninth Edition) which defines it as: "1. The initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief', but having regard to the legislative scheme of s. 99(1), to apply that meaning to the word 'complaint' in the provision would in our view be absurd.
>
> [22] In the context of s. 99(1), a more accurate definition would be an allegation of misconduct: see also *Re Howard E Cashin* [1989] 1 LNS 49; [1989] 3 MLJ 129, where a complaint is defined as an accusation of misconduct. In *Majlis Peguam v. Cecil Wilbert Mohanaraj Abraham* [2019] 5 CLJ 139 ("Cecil Abraham") this court made the following pertinent observations:

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> [29] In interpreting or construing any document, as in the letter of complaint in this case, to obtain the intent and purpose of the same, Courts must read that document in its entirety. That is trite law. Taking that approach, we have no hesitation in concluding that the letter of complaint was in fact a complaint meeting the requirement of s. 99(1) of the LPA and our reasons are these.

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> [30] Firstly, one must not lose sight of the fact that complaints made under the LPA are mostly made by lay people and if one is to take a strict and narrow approach in determining whether a letter written by someone not well versed to legalism would in our view defeat the purpose of the LPA which undoubtedly is a piece

C

> of legislation aimed to ensure complainants' access to justice is not unduly hampered.
>
> [31] secondly, we must give some meaning to the heading of letter of complaint which simply reads "COMPLAINT". It also begs the question – "why should the complainant write to the DC in the

D

> first place? ... The answer surely is that the only intent is to make a complaint relating to the alleged misconduct of the respondent As to how the complaint is framed, they should not be construed in a manner which may make one's constitutional right to access to justice erroneous. Hence with respect there was no necessity to seek solace in the *Oxford Dictionary* to determine what the word

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> "complaint" means in the context of the LPA.

[75] Reverting to the facts in the instant case, having read the contents of the email dated 19 December 2014 entitled "Memohon Pengesahan Sijil Amalan Guaman" from Puan Ida to the first defendant, the subsequent correspondences between the parties and the letter dated 14 December 2015

F

"Complaint by Bar Council against Tania Scivetti (of Messrs Scivetti & Associates) ("respondent")" from the first defendant to the second defendant (ie, Disciplinary Board) requesting the latter to enquire into the complaint, I am of the view that the letter dated 14 December 2015 is the complaint.

[76] If time were to start running from the hearing before the Advisory

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Board on 4 November 2014, the last day of the six-year limitation is on 3 November 2020.

[77] However, if time were to start running from 14 December 2015, the last day of the six-year limitation period is on 14 December 2021 for a

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complaint concerning the conduct of the plaintiff shall be inquired into by the Disciplinary Board (second defendant) after the expiration of six years from the date when the right of action to bring the complaint accrued.

[78] Now, let me recap the relevant chronology of events as follows:

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(i) On 4 November 2014, the hearing before the Advisory Board of Prime Minister took place.

(ii) On 19 December 2014, an email by Puan Ida seeking clarification or confirmation of possession of practising certification.

(iii) On 24 December 2014, the Bar Council replied to Puan Ida that Encik Akbar does not have a record with the Bar Council.

(iv) On 21 July 2015, a letter from the first defendant to the plaintiff seeking explanation on the legal representation by Encik Akbar.

(v) On 10 August 2015, an explanation given by the plaintiff to the first defendant.

(vi) On 14 December 2015, a letter entitled "Complaint by Bar Council against Tania Scivetti (of Messrs Scivetti & Associates) ("respondent")" from the first defendant to the second defendant.

(vii) On 16 March 2016, a letter from the second defendant to the plaintiff seeking written explanation about the first defendant's letter dated 14 December 2015 encapsulated incident of legal representation by Encik Akbar on 4 November 2014.

(viii) On 28 March 2016, the plaintiff replied to the second defendant.

(ix) On 12 May 2016, the first defendant informed the second defendant that the explanation given by the plaintiff was unsatisfactory and requested the second defendant to proceed with the investigation.

(x) On 14 September 2016, the second defendant suggested for summary hearing.

(xi) On 23 September 2016, the plaintiff disagreed with the summary hearing.

(xii) On 31 October 2016, second defendant informed that a Disciplinary Committee shall be appointed.

[79] The issue now is whether the alleged six-year limitation under s. 99(3A) of the LPA submitted by the plaintiff is an issue or in fact a non-issue here? I refer to ss. 99(3A) and 100 of the LPA again.

[80] The provision of s. 99(3A) of the LPA is as follows:

Section 99. Complaint against advocate and solicitor or pupil

(3A) *No complaint concerning the conduct of any advocate and solicitor or of any pupil shall be inquired into by the Disciplinary Board after the expiration of six years from the date when the right of action to bring the complaint accrued*:

Provided that where:

(a) the complaint is based upon the fraud of the advocate and solicitor or his agent or of any person through whom he or his agent claims; or

A (b) the right of action to bring the complaint is concealed by the fraud of the advocate and solicitor or of his agent or any person through whom he or his agent claims, the period of limitation shall not begin to run until the complainant has discovered the fraud, or could with reasonable diligence have discovered it;

B (emphasis added)

[81] The provision of s. 100 of the LPA is as follows:

Inquiry into application or complaint

100. (1) Where a written application or complaint is made or referred to
C the Disciplinary Board, the Disciplinary Board shall, if it is satisfied that:

(a) there is no merit in the application or complaint, dismiss the application or complaint and notify the complainant and the advocate and solicitor of its decision; or

(b) there is merit in the application or complaint:

D (i) post or deliver to the advocate and solicitor concerned a copy of the application or complaint together with all supporting documents, if any, furnished to the Disciplinary Board; and

(ii) request the advocate and solicitor to furnish his written explanation in quadruplicate together with supporting
E documents, if any, within fourteen days of the request or within such longer time as the Disciplinary Board may allow.

(2) Where the advocate and solicitor does not furnish his written explanation to the Disciplinary Board as requested under subparagraph (1)(b)(ii), the Disciplinary Board shall proceed to appoint a Disciplinary
F Committee .

(3) Where the advocate and solicitor has furnished his written explanation to the Disciplinary Board under subparagraph (1)(b)(ii), the Disciplinary Board shall review the matter and:

(a) if it is satisfied that there is no merit in the application or complaint,
G dismiss the application or complaint and notify the parties accordingly; or

(b) if it is still of the view that there is merit in the application or complaint, proceed to appoint a Disciplinary Committee.

(4) ...

H ...

(11) If the advocate and solicitor does not agree that the application or complaint be dealt with summarily, the Disciplinary Board shall proceed to appoint a Disciplinary Committee pursuant to s. 103A.

I (12) The Disciplinary Board may, at any stage after an application or a complaint has been received, require the production of such further documents or explanations from either the complainant or the advocate

and solicitor or both or from such other person as the Disciplinary Board may require, and the parties to the application or complaint shall be provided with all such documents or explanations.

(13) Any advocate and solicitor or any other person who without reasonable excuse refuses or fails to produce to the Disciplinary Board any document or fails to give any information which may relate to or be connected with the subject matter of the complaint shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to a term of imprisonment not exceeding three months or to both.

(14) **The Disciplinary Board may, at any stage of an inquiry into an application or complaint, determine that a formal inquiry is required and appoint a Disciplinary Committee accordingly**.

(15) Nothing in this section shall preclude the Disciplinary Board from dismissing an application or complaint at any stage.

(emphasis added)

[82] It is to be noted that the keywords in s. 99(3A) of the LPA on the six-year limitation is referring to the inquiry to be carried by the Disciplinary Board (ie, the second defendant), not the Disciplinary Committee (ie, the third defendant).

[83] Having read the above relevant chronology of events, in particular, the events in the issue of:

(i) On 14 December 2015, a letter entitled "Complaint by Bar Council against Tania Scivetti (of Messrs Scivetti & Associates) ("respondent")" from the first defendant to the second defendant.

(ii) On 16 March 2016, a letter from the second defendant to the plaintiff seeking written explanation pertaining to the first defendant's letter dated 14 December 2015 encapsulated incident of legal representation by Encik Akbar on 4 November 2014.

it is therefore clear that the period from 14 December 2015 to 16 March 2016 is clearly within a six-year limitation period.

[84] Be the alleged legal presentation by Encik Akbar on 4 November 2014 is the right of action to bring the complaint accrued, the alluded chronology of events and reading of ss. 99(3A) and 100 of the LPA show that the second defendant being the Disciplinary Board, is still within the six-year limitation period "inquired into by the Disciplinary Board" by having initiated "inquiry" with the sending of its letter dated 16 March 2016 to the plaintiff seeking her explanation about the first defendant's letter dated 14 December 2015 which encapsulated incident of legal representation by Encik Akbar on 4 November 2014.

[85] The inquiry required under s. 99(3A) of the LPA was already embarked on by the second defendant on or before its letter dated 16 March 2016 when it requested the plaintiff to provide a written explanation to the complaint by the first defendant dated 14 December 2015.

[86] Therefore, I am of the opinion that the issue on the six-year limitation under s. 99(3A) of the LPA is indeed a non-issue in this instant case.

One-month Time Lapse Under Section 103B(1)

[87] The plaintiff also submitted on the issue of a one-month time lapse under s. 103B(1) of the LPA. The plaintiff submitted that the third defendant failed to commence its inquiry within one month from the date of its appointment on 27 December 2016.

[88] The provision of s. 103B(1) of the LPA is as follows:

Section 103B. Inquiry by the Disciplinary Committee

(1) The Disciplinary Committee shall, within one month of its appointment, commence its inquiry into the written application or complaint and shall make its findings expeditiously.

[89] The plaintiff highlighted that there was not an iota of explanation given by the third defendant regarding the inordinate delay of more than four years by the third defendant to commence its inquiry fixed on 19 April 2021 at 10am.

[90] The plaintiff submitted that the act of convening an inquiry by the third defendant at this juncture is illegal, void and of no effect as there has been a deliberate breach of mandatory provision of the LPA.

[91] The second and third defendants did not explain the inordinate delay. The second and third defendants relied on *Koh Mui Tee* (*supra*) and submitted that delay under the circumstances is not fatal and the issue of limitation and time lapse can still be raised at the inquiry.

[92] The facts of *Koh Mui Tee* (*supra*) is on the delay of about eight and half months on the Disciplinary Committee to furnish its report together with the record of the investigation proceedings to the Disciplinary Board partly resulted from objections from the appellant. However, the fact of this instant case is different where the plaintiff submitted on the inordinate delay of more than four years on the part of the third defendant to commence inquiry.

[93] In condoning the delay, Abdul Wahab Patail JCA (as he then was) in *Koh Mui Tee* (*supra*) made the following ruling:

Failure by the Disciplinary Committee to comply with r. 26(2) of the Legal Profession Rules (Proceedings of the Investigating Tribunal and Disciplinary Committee) 1994

[23] Section 103F of Act 166 gives power to make rules. In exercise of this power, the disciplinary board made the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 (PU(A) 189 of 1994). Rule 26 provided as to the report of Disciplinary Committee to the disciplinary board. Sub-r. (2) and (3) thereof provides in clear and specific terms:

(2) The report of the Disciplinary Committee together with the record of the investigation proceedings shall be sent to the Director within two months from the date of the appointment of the Disciplinary Committee.

(3) The period prescribed in subrule (2) may, upon an application in writing made by the chairman of the Disciplinary Committee, be extended by the chairman of the Disciplinary Board if there exists reasonable grounds to do so.

[24] Addressing this issue, Messrs Thevin, Chandran & Assoc appearing for the disciplinary board, produced letters from the chairman of the Disciplinary Committee seeking extension of time dated 2 August 2007, 15 January 2008, 10 June 2008, 6 August 2008, 24 March 2009 and 14 July 2009 and the corresponding grant of extensions until 29 September 2009 by letters 3 August 2007, 29 January 2008, 13 June 2008, 25 August 2008, 2 April 2009, and 21 July 2009.

[25] There is no evidence of further extensions being given after 29 September 2009. It is, therefore, the last date for the submission of the report of the Disciplinary Committee and the record of the investigation proceedings. The hearing by the Disciplinary Committee was on 9 September 2009. That is within the extension given. But the report was submitted only on 15 June 2010, 8½ months after the expiry of the last extension. The report was accepted by the disciplinary board.

[26] The purpose of the sub-rule is to avoid delays. The two month time frame is not a hard and fast rule. The key point is that the report is completed and submitted as soon as possible so that the complaint can be dealt with on the merits. It is also not provided that the disciplinary board cannot accept a report that is submitted out of time. Extensions of time can be allowed by the disciplinary board. We take into consideration that the Disciplinary Committee is not a full time paid occupation, and the members have their own full time occupation from which they have to find the time to discharge their responsibilities as members of the Disciplinary Committee. There is no contemporaneous evidence of objections or representations to the disciplinary board of any injustice caused to the appellant by the grant of extensions and delay in the disposal of the matter. *Indeed, it appears that at least part of the delay resulted from objections from the appellant.*

[27] *We conclude it would be wrong to apply the provision as a strict technical barrier providing a blanket protection for an advocate and solicitor the subject of a complaint by a client, unless it is shown that the delay caused an injustice to the advocate and solicitor. Otherwise the protection given to the public that clients of advocates and*

solicitors can take their complaints of misconduct to a professional forum becomes illusory. The disciplinary board is authorised to grant extensions at any time, and is entitled to accept a report submitted out of time. Thus, while the submission of the report on 15 June 2010 could have been rejected by the disciplinary board, its acceptance of the report amounts to a further extension being given to the date of acceptance.

[28] We, therefore, dismiss this part of the submission for the appellant.

(emphasis added)

[94] Hence, on the issue of time lapse under s. 103B(1) of the LPA, I found that there is a very strong and cogent ground for the plaintiff as there is no explanation given by the second and third defendants for the inordinate delay. As justice delayed is justice denied, the second and third defendants must make their findings expeditiously.

[95] Nevertheless, I take note that the hearing of disciplinary proceedings has yet to take place. A more important question for me to ask is this: is it justifiable for this court at this juncture to grant the extensive prayers merely on the issue of time lapse under s. 103B of the LPA is more favourable to the plaintiff?

1. That this Honourable Court decrees and issues a declaration as follows:

(a) That the right of action under s. 99(3A) of the LPA accrued on 4 November 2014 being the date of the alleged event;

(b) The inquiry scheduled for hearing on 19 April 2021 before the third defendant is the first inquiry on the complaint by second defendant by virtue of s. 103A of the LPA;

(c) That pursuant to s. 99(3A) of the LPA, the limitation period of six (6) years from 4 November 2014 has already been set in and the third defendant is estopped or barred from proceeding with any inquiry on the complaint *via* the third defendant;

(d) That an email dated 19 December 2014 from Advisory Board to the second defendant complaining about the conduct of a hearing dated 4 November 2014 is the complaint made against the plaintiff under s. 100(1) of the LPA;

(e) That a letter dated 14 December 2015 by the first defendant is not a complaint under s. 100(1) of the LPA and of no effect against the plaintiff;

(f) That the findings of guilt and/or misconduct in the letter dated 14 December 2015 made prematurely by the first defendant and executed by the then, President of the first defendant was a blatant act of bias, abuse of power and also abuse of process that amounts to a transgression of the plaintiff's right to a fair hearing under art. 5 of FC;

(g) That the act of convening an inquiry by the third defendant on the appointment by the second defendant at this juncture is illegal, void and of no effect as there has been a breach of mandatory provision of s. 103B(1) of the LPA;

(h) That there has been a violation of art. 5 of the FC by the act of the second and third defendants convening the inquiry not in accordance with the law, which has the effect of jeopardising the plaintiff's rights to livelihood and therefore unconstitutional;

(i) That there has been a violation of art. 8 of the FC by the act of the second and third defendants convening the inquiry not in accordance with the law, as the plaintiff was deprived from the rights of equality with the rights of another class of people who are also subjected to the disciplinary proceedings under the same Act but was done in accordance with the law;

(j) That the disciplinary proceedings instituted by the second defendant against the plaintiff was therefore illegal, null and void;

2. An interim injunction be and is hereby granted to restrain the second and third defendants from proceeding with any disciplinary proceedings against the plaintiff pending the outcome of the plaintiff's originating summons.

3. A permanent injunction restraining the second and third defendants either by themselves and/or through their servants and/or their agents from proceeding with any disciplinary proceedings against the plaintiff due to lapse of time.

4. Further, and/or in the alternative, that all such further disciplinary proceedings against the plaintiff be stayed pending the outcome of the plaintiff's originating summons.

5. That no order in relation to cost is made in relation to this originating summons; and

6. For any other reliefs and/or orders deemed fit by this Honourable Court.

[96] Again, I wish to say that the hearing of disciplinary proceedings has not even started. The plaintiff has prematurely filed this application to injunct the second and third defendants from performing its adjudicative duty under the legislation. The court must deal with the application in hand at this juncture with caution as I do not want to be perceived as prematurely interfering with the adjudicative function of second and third defendants.

Conclusion

[97] To conclude, it is my opinion that the six-year limitation under s. 99(3A) of the LPA is a non-issue. The second defendant being the Disciplinary Board is still within the six-year limitation period "inquired into by the Disciplinary Board" by having initiated "inquiry" with the

A sending of its letter dated 16 March 2016 to the plaintiff seeking her explanation about the first defendant's letter dated 14 December 2015 which encapsulated incident of legal representation by Encik Akbar on 4 November 2014.

B **[98]** The keywords in s. 99(3A) of the LPA on the six-year limitation refer to the inquiry to be carried by the Disciplinary Board (*ie*, the second defendant), not the Disciplinary Committee (ie, the third defendant).

[99] Referring to s. 100(1)(b) of the LPA and looking at the chronology of events, the inquiry required under s. 99(3A) of the LPA was already C embarked into by the second defendant on or before its letter dated 16 March 2016 when it requested the plaintiff to provide written explanation to the complaint by the first defendant dated 14 December 2015. The plaintiff should forward this argument before the disciplinary proceedings and argue their case.

D **[100]** Lastly, to answer whether it is proper for this court to grant a permanent injunction restraining the second and third defendants either by themselves and/or through their servants and/or their agents from proceeding any disciplinary proceedings against the plaintiff, I am of the view that permanent injunction must not be granted.

E **[101]** The Federal Court in *Manggai* (*supra*) affirmed that where a statute creates a right and gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

F **[102]** The Court of Appeal in *Cheah Foong Chiew* (*supra*) decided that it would be wrong for the courts to intervene at this stage as it would be tantamount to restraining the respondent from hearing the charge against the appellant, and would pre-empt the defendants' right under the law to adjudicate the matter.

G **[103]** For reasons I have stated earlier that permanent injunction must not be granted, hence, the extensive declaratory reliefs sought by the plaintiff at this juncture must not be entertained following the decision in *Tetuan Choong & Co & Ors* (*supra*).

[104] Based on the aforesaid reasons, I dismissed the plaintiff's originating H summons (encl. 1) with no order as to costs.

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